

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, DECEMBER 21, 2006**

MEMBERS PRESENT: Robert Vic Lessard, Chairman
Tom McGuirk, Vice-Chairman
Bill O'Brien, Clerk
Jack Lessard, Alternate
Bryan Provencal, Alternate

OTHERS PRESENT: Kevin Schultz, Building Inspector

The Chairman called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance to the Flag. He then introduced the members of the Board. He also expressed gratitude for the outpouring of caring and love in his time of need, with his son becoming ill.

65-06 The petition of James & Jacqueline Valentino for property located at 747 Ocean Boulevard and 5 Third Street seeking relief from Articles 4.5.1, 4.5.2 and 4.5.3 to raise and redo the existing 24'x34' rear building on Third Street, keeping the same dimensions, but providing interior parking for two vehicles and removing the encroaching front steps and rear deck. This property is located at Map 223, Lot 38 in a RA zone.

Atty. Peter Saari came to the table with Jackie Valentino and noted her husband is also in the audience. Mr. Saari explained that this cottage is quite nonconforming and most significantly it has a deed restriction for 7 foot setbacks. The cottage is too close to the front lot line. They want to move the building back to meet the deed restriction setbacks; however, they still won't be able to conform to the RA side, front and rear setbacks. The petitioners want to improve this cottage so that when they retire they can live here year round. They will be making the property more conforming. This is an old building and they have been doing some updating over the years. This will do substantial justice as the property will become more conforming. It is not suitable for year round use and while improving the property it will also be improving the neighborhood.

Questions from the Board:

Mr. O'Brien verified that the cottage will be raised, with a garage added underneath, while also adjusting the location of the cottage on the lot to meet the 7 foot deed restriction. Also the only entrance into the house will be through the garage. There will no longer be a deck at the rear. The 2 nonconforming sheds will be removed. He also mentioned the deed restriction for 1 single family house and 4 bedrooms.

Mr. Lessard explained that they are pre-existing and therefore are o.k. These structures have existed since the 30's or 40's and a blanket variance was granted years ago when he was a Selectman.

Mr. Schultz added that it would be different if they were tearing down the structure, but they are not. With this major renovation, he is requiring that they meet the deed restriction

Mr. O'Brien also asked about the notation L.C.A. on the plan. Mr. Saari said it stands for limited common area assigned to this unit. This lot is condominiumized but is still 1 lot. The Valentino's own both houses at the present time.

Comments from the Audience: None.

Back to the Board:

Mrs. Valentino said they are going to sell the front property, down size and live in the back.

The Chairman verified that Atty. Saari has read through the 5 criteria.

Mr. Schultz is concerned that the home will only have the garage doors as access to this 3 story home. He thought they were proposing stairs on the side that also meet the 7 foot setback. The 2 cars under cover the required parking. The plan shows stairs on west side. Atty. Saari said the stairs have to stay, it appears. Mrs. Valentino would like that. Mr. Schultz verified the setbacks to be 7 feet at the rear to the drip edge, the west side is 9 feet to the deck and 12 feet to the dripedge, and 7 feet to dripedge on the front, with plenty of room between the buildings.

Mr. O'Brien verified that they are only raising the existing structure, they are not adding to the structure. He then asked Mr. Schultz if he will require a survey. Mr. Schultz responded he will require an as-built plan prior to final occupancy permit. Mr. O'Brien complained that he had to have his property surveyed after the foundation was poured and then at completion. Mr. Lessard advised Atty. Saari that they have their surveyor, Ernie Cote, put stakes in the ground when the hole is dug.

The Chairman asked the Board if they agree with the 5 criteria. They all said yes, with Mr. O'Brien putting extra emphasis on making sure they meet the deed restrictions.

Mr. Jack Lessard MOVED with grant with the stipulation that they have 2 egresses, Mr. McGuirk SECONDED.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION GRANTED.

Mr. O'Brien noted to Atty. Saari that floor plans are required and were not submitted with the petition. He would like to see them submitted in the future.

66-06 The petition of Thomas Broderick/Steve McGuire, Members Keeley Ann Development, LLC for property located at 2-4-6 Keefe Avenue seeking relief from Articles 1.3, 4.5.1, 4.5.3 and 8.2.3 to replace an existing exterior, unsafe and unattractive deck with roof, landing and stairway to the 2 second floor condominium units with less structure, including new deck without roof, landing and stairway – all constructed to code. This property is located at Map 290, Lot 72 in a BS zone.

Mssrs. Thomas Broderick and Steve McGuire came to the table to speak on the petition.

Mr. Broderick explained the petition to make the property more attractive and to upgrade the property. There are currently 5 units with 2 units on the second floor that require extra egresses. This cannot be achieved by any other reasonable method. The decks need to be brought up to code. They will be reconstructed in the same general area as existing. The left setback will be increasing to 16 feet, from 14. The new deck will no have a roof.

Questions from the Board:

Mr. Provencal asked if they are keeping the shed. Mr. Broderick responded yes, they will be replacing it with a new one.

Mr. O'Brien is concerned that this was advertised as being in the BS Zone when it is in the RB Zone. The Board discussed this and determined that it is the RB Zone, however is also under petition by the Planning Board for a new zone. Mr. O'Brien is also concerned that there is an existing side setback problem that they are not asking relief from here tonight, the amount of sealed surface, and the drawings showing stairs on a platform.

Comments from the Audience:

Mr. Bob Martel, rear abutter, said he has a new single family home behind this property. He is concerned with the deck expansion closer to his home when this property is already very close to his bedroom windows. He's not concerned with the other decks and as they are closer to the street. He is concerned with people smoking and sitting out there making noise at night. He is concerned with the affect this will have on his quality of life. He distributed pictures to the Board of his view of this deck.

Mr. Ed Costello, also rear abutter, has the same concerns.

Back to the Board:

Mr. O'Brien would like to give the petitioners the opportunity to withdraw and resubmit correcting the zone, correcting the drawing for the stairs, they should also seek relief for the side setback for the right hand side, he said. They cannot put the shed back without this Board's approval. They need to add relief for the impervious surface (4.8) as presented, and to take into consideration the concerns of the abutters with the rear deck.

Mr. Schultz explained that once the shed was removed it cannot be put back. The nonconformity expires.

The Chairman agrees with Mr. O'Brien and advised the petitioners that it would be in their best interest to withdraw without prejudice and come back with the revised petition taking care of these concerns.

Mr. Broderick asked the Board if he could withdraw without prejudice. Mr. O'Brien MOVED to allow the petitioners to withdraw, recommending the concerns as noted above, SECONDED by Mr. Jack Lessard.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION WITHDRAWN.

Mr. McGuire explained that they repositioned that deck so as to not affect the parking space and to make a straight run down to the ground.

The Chairman asked the neighbors if they were concerned with putting the shed back, they were not.

67-06 The petition of David Malvik for property located at 12 Cliff Avenue seeking relief from Article 3.8 to restore property to three unit multi family. This property is located at Map 267, Lot 8 in a RA zone.

Mr. Malvik came to the table to speak on the petition. He explained that he would like to reinstate the third unit that existed prior to his purchasing the property. Shortly before he purchased the property, it was changed to a 2 family. He would like to reinstall the wall and stove the put back

the owners unit. He submitted to the Board approval letters from two abutters. He then read through the 5 criteria as submitted with the petition.

Questions from the Board:

The Board discussed how this occurred. Mr. Schultz said the Bob Charrette did the inspections on this. There are 2 units out there. There was a discrepancy with the Assessor's records.

The petitioner bought from Sharon Tobey. She had a large family and took out 1 unit.

Mr. O'Brien had concerns with the abutters list. Mr. Malvik said that Mrs. Smalley owned those lots on Boars Head Terrace.

Mr. Jack Lessard said this has always been a 2 family. Mr. Malvik said there's a 4 family next to him and a 2 family.

Comments from the Audience: None.

Back to the Board:

Mr. O'Brien reported that there are letters from 11 and 14 Cliff Avenue supporting the petition. One being Ringham.

There are also 5 opposing letters from Dimos, DePippo, Doyle, Cloutier and Flaherty.

The Chairman commented that this is the RA Zone. He is aware of another petition that tried to increase the number of units in the neighborhood and they were turned down.

Mr. Malvik explained that he has owned the property for 3 months and lived there 1 year prior. He did purchase the property as a 2 family.

The Chairman asked the Board if they agreed with the 5 criteria. Mr. McGuirk said he'll abstain. The others all said no.

Mr. O'Brien explained this is the RA Zone. He's not in favor of going in the opposite direction.

Mr. Jack Lessard MOVED to deny the petition, SECONDED by Mr. O'Brien.

VOTE: FOR 4, OPPO 0, ABST 1(TM)

MOTION PASSES.
PETITION DENIED.

68-06 The petition of William & Marcia Kenny for property located at 15 Keefe Avenue seeking relief from Articles 1.3, 4.1.1, 4.5.1, 4.5.2, 4.5.3 and 6.3.1 to demolish the existing 2-story single family dwelling and replace with a new 2-story single family dwelling on the same foundation. This property is located at Map 290, Lot 85 in a RB zone.

Atty. Peter Saari and Bill Kenny came to the table to speak on the petition. Mrs. Kenny was in the audience. Mr. Saari explained that the petitioners have owned the property for 30 years. This is kind of reverse of the previous petition. They want to tear down the structure and build a new single family home on the lot on the existing foundation. The only change is it will be 2 stories with a stairway and a deck. This is in the public interest because they are replacing old with new. The Kenny's want to retire here. This is a very mixed use street with a hotel at the front, condos and single family properties. The new structure will have 5 bedrooms, 2 baths and 1 kitchen. He read

through the 5 criteria as submitted with the petition. There's no way to make use of the lot without a variance, he said. The structure is 27 feet by 30.5 feet. This is the least dense use. There is stacked parking.

Questions from the Board:

Mr. O'Brien questioned the plan. The survey shows 5.8 feet to the house at the rear and the new plan shows a 6 foot storage area in that location. Atty. Saari agrees something is wrong. It was determined that the survey was the correct one.

The Board discussed stacked parking and the plans. Mr. O'Brien would rather see the stairs at the end of the porch, along the building, so there is some access around the back. The petitioner agreed.

Comments from the Audience: None.

Back to the Board:

The Board discussed the Keefe Avenue right of way. The Chairman polled the Board on the 5 criteria. They all agreed they are met here.

Mr. O'Brien MOVED to approve the petition based on Ernie Cote's Survey Plan dated 11/22/06, with an adjustment in the rear, whereas they cannot be any closer than 2.8 feet to the rear lot line, putting the stairs on the west end of the landing and a roof over the landing is allowed, SECONDED by Bryan Provencal.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION APPROVED.

69-06 The petition of Thelma Doherty for property located at 15 Harris Avenue seeking relief from Articles 1.3 and Article 4 as to 4.5.2, Table II, Footnote 26 to allow construction of a drip edge above an existing side wall. This property is located at Map 295, Lot 33 in a RB zone.

Matthew Watski, friend of the petitioner and Tom Doherty, son of the petitioner came to the table to speak on the petition. Mr. Watski reported that they started construction without a permit. The proposal involves that back $\frac{1}{2}$ of the house. They lifted it up and are adding a second story. They needed to re-orient the roof so that the pitch takes the water to the side. They are less than 7 feet from the left side lot line. 4.4 feet to the dripedge. The front isn't changing it's 5.3 to the dripedge. This proposal is consistent with the design and scale of the neighborhood. He submitted 3 letters of support from abutters (Stone, Bouchard and Cronin). The family has also spoken to other neighbors and understands everybody is comfortable with the project. The chimney is 4 feet from the lot line. The shed is not in compliance, their intent is to remove the shed.

Questions from the Board:

Mr. O'Brien asked who the builder is? Larry Kenny from Boston, MA. He asked him how he thought he could start construction without a building permit? He said it didn't start out that way. It started as some interior renovations.

Tom Doherty said there is no excuse and it's all his fault. They started the project with the intent of some interior renovations for his mother who has lost her sight. It was supposed to be a surprise for the holidays. They were removing the gas for safety and giving her electric appliances. The builder was following his urgency instructions. He felt when he got to the electrical and plumbing he would get the Town involved. He is very sorry and will do whatever he has to to make it right.

The Board discussed the fact that he didn't have a building permit and was adding a story to the building. The Building Inspector said he would do whatever the Board decides. If they approve the petition, there will be a meeting held and fines to pay before work can restart. Permits are needed for the building renovations, fence, plumbing, electrical and mechanical. State of NH licensed masters are required to do the electrical, plumbing and mechanical work.

Mr. Doherty said his mother is going to require live-in help. The room upstairs is to give the caregiver some privacy. The fence was contracted back in August and he appreciates the Building Department allowing that to be installed. He was told by the contractor that a permit was not required.

Mr. O'Brien verified with Mr. Schultz that the building cannot be occupied until a new Certificate of Occupancy is given.

Comments from the Audience: None.

Back to the Board:

Mr. Jack Lessard wants to approve this and turn it over to the Building Inspector.

The Board discussed the expansion. He went straight up from the existing first floor. The structure is 4 feet at the closest point on the left lot line, at the chimney. There is a 6 inch difference at the rear because of the dripege.

Mr. McGuirk feels this is total disrespect. Mr. O'Brien had to tear down his whole house because of the chimney. This seems like another story we've heard before, he said.

Mr. O'Brien MOVED to approve the petition noting that the building cannot be occupied until all the Building Inspector's conditions are met, SECONDED by Jack Lessard.

VOTE: FOR 2, OPPO 2(TM,BP)

MOTION FAILS.

The Board went around and around on a motion. The possibility of FEMA Regulations coming into affect were discussed. Mr. Watski didn't feel they needed to meet those requirements. The Building Inspector hasn't even looked into that yet. He will however look into it, if the Board approves this work. He feels this is a substantial improvement. This is an expansion of a nonconforming use, but also when this neighborhood was built, there were 4 foot setbacks. Mr. McGuirk feels they should move the house to meet the setbacks, but received no seconds. Postponing the petition to January was also discussed.

Mr. Jack Lessard spoke of a time when he had to add on for a caregiver. It's a difficult situation. Mr. Doherty said it would be a financial hardship to have to move the house.

Mr. Provencal MOVED to approve the petition, he doesn't see any advantage to moving the house over, SECONDED by Mr. Jack Lessard.

VOTE: FOR 4, OPPO 0, ABST 1(TM)

MOTION PASSES.
PETITION GRANTED.

Mr. O'Brien commented that this was so gross of an act that future petitions like this will be difficult to pass by him. Mr. Vic Lessard said he's been in business for 52 years and he has yet to see a town that doesn't require a building permit. The contractor is to blame as much as the

owner's son. He also advised that the owner's son as well as the contractor be at all meetings with the Building Inspector.

70-06 The petition of David & Elizabeth Cargill for property located at 501 Winnacunnet Road seeking relief from Articles 1.3, 4.1.1, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to construct two (2) additional residential units to the site for a total of four (4) units within two (2) structures. This property is located at Map 222, Lot 117 in a RB zone.

Atty. Steve Ells and David Cargill came to the table to speak on the petition. Mr. Ells explained that a 2 unit duplex exists on the property and they would like to build another 2 family structure. The lot has 60,000 square feet with 12,862 of buildable area because of wetlands and wetlands buffer. In 2000 a variance was granted to subdivide the lot and allow no more than 2 units on the new lot; however that was taken to Superior Court by an abutter and reverted back to this Board by the Court on a procedural basis. The petitioners never pursued that further. He feels the Board needs to make a decision as to whether this petition is materially different from that one. He feels it is.

Mr. O'Brien recommended this be postponed to next month as this is new information that he didn't have time to review beforehand.

The Board discussed the 2000 petition. Mr. Cargill did have a copy of the plan.

A person representing Elizabeth Muhilly of 506 Winnacunnet Road, spoke about the 2000 petition and another one in 2003. He also spoke of 2 court cases that would pertain to this situation. One being Fisher vs. the Town of Dover. He offered to submit them to the Board. He doesn't think this is a material change or is materially different. The house is in the exact location of the subdivision approval. The lot has not changed and the building has not changed. He also doesn't feel the Boccia decision is a material change.

Mr. O'Brien MOVED to postpone this petition to be first on the January agenda to give the Board time to review the history of this property and to consult with Town Attorney Mark Gearreald on substantial/material change, SECONDED by Mr. Jack Lessard.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION POSTPONED.

71-06 The petition of Ocean Edge Motel, Inc. for property located at 915 Ocean Boulevard seeking relief from Articles 1.4.4, 1.3, 3.3, 4.1, 4.1.1, 4.2, 4.3, 4.5.2 and 4.7 to renew variance granted on 11/1/04 and not renewed prior to the expiration. This property is located at Map 168, Lot 20 in a RA zone.

Atty. Craig Solomon and Phil Serowik, Manager, came to the table to speak on the petition. Mr. Solomon summarized the property and the situation. There is an existing 6 unit motel with a single family cottage. They received approval to demo this and build a 2 unit building on the property back in November of 2004. They are asking for an extension to November 1, 2007 as the 2 year approval period has expired.

Proper procedure was discussed. They should've come in before the expiration date. Mr. Vic Lessard explained that the petitioner was stalled by the Board recommending that he not start construction in the spring. He also favored that the petitioner has cleaned up what is there.

The Board discussed like petitions, like to one on Thorwald a few months back. The plans were discussed. There are 2 units with 3 parking spaces under the structure and one outside. Mr. O'Brien complained that there are no floor plans. Atty. Solomon stated that there are deed

restrictions, but they did go to Town Meeting to get that lifted. Mr. O'Brien asked the attorney to submit the entire package next time. The Board discussed the definition of substantial completion.

Mr. Jack Lessard MOVED to grant the extension of the variance to 11/1/2007, SECONDED by Mr. Provencal.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION GRANTED.

72-06 The petition of 435 Hampton, LLC, through Hector & Ellen Zumbado, for property located at 433-455 Lafayette Road seeking relief from Articles 1.3, 6.1 and 6.3.3 from off-street parking requirement in order to use property for a professional office. This property is located at Map 160, Lot 18 in a B zone.

Hector Zumbado came to the table to speak on the petition. He apologized for the error of the property address. It is 433 to 435 Lafayette Road. He said he would like to move his legal offices to this location. He has 11 employees, 3 of which are part time, and 2 of which are other attorneys that come and go. He has watched the municipal parking lot out behind the building and there appears to be plenty of parking during the weekdays. He will open 8:30 to 5:30 Monday through Friday. Before he had tenants with 4 cars that used the parking lot all night and weekends, which is the busiest time for the lot. His office is currently in Hampton Falls. He was part of Jensen and Zumbado. They were partners for 10 years. Jensen has since retired. He has taken over his clients. He currently rents from Jensen.

Mr. Zumbado read through the 5 criteria as submitted with the petition. This is a commercial/business zone and is an allowed use. It will not interfere with parking for the restaurants.

Questions from the Board: None.

Comments from the Audience: None.

Back to the Board:

The Chairman polled that Board on their acceptance of the 5 criteria. They all agreed.

Mr. O'Brien MOVED to grant the petition, SECONDED by Mr. Provencal.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
PETITION GRANTED.

Mr. Jack Lessard MOVED to adjourn the meeting at approx. 10:20 p.m., SECONDED by Mr. McGuirk.

VOTE: FOR 5, OPPO 0

MOTION PASSES.
MEETING ADJOURNED.

Respectfully submitted,

Angela Silva,
Recording Secretary.